IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3609 of 2006

Shri Madhukar Rambhau Phatak — Petitioner
Vs.
Pune Municipal Corporation & ors. — Respondents

Mr.A.V.Anturkar with Mr.S.B.Deshmukh for petitioner.

Mr.R.G.Ketkar for Resp.nos.1 to 3.

Mr.P.G.Hartalkar for Resp.no.4.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

November 29, 2006.

P.C.

1. In this petition filed under Article 226 of the Constitution the petitioner prayed for directions against the respondent nos.1 and 2 to issue notice under the Bombay Provincial Municipal Corporation Act, 1949 and the Maharashtra Regional Town Planning Act, 1966 against the respondent no.4 and to prosecute the same diligently and to hold an enquiry against the conduct of the respondent nos.2 and 3 for actively supporting the respondent no.4 and deliberately committing the mistake and to take an action against the respondent no.2.

2. Due to the orders passed by this Court from time to time the respondent nos.1 to 3 have

demolished the illegal constructions made by the respondent no.4 and more particularly the parking wall and the iron staircase. In addition the wall separating the bungalow of the respondent no.4 and the building of Galaxy Arcade which was demolished illegally by the respondent no.4 has been reconstructed. It was alleged that the respondent no.2 issued the notice dated 24/1/2006 in the name of the son of the respondent no.4 deliberately and with an intention to assist the said respondent to approach the civil court and obtain injunction which injunction was granted. A fresh notice was issued to the respondent no.4 for illegal construction and allegedly after this the petition was filed. It was under these circumstances that the petitioner prayed for an appropriate enquiry against the respondent no.2.

3. The respondent no.2 has filed an affidavit-in-reply in compliance with the direction of this Court set out in the order dated 26/9/2006. From the said affidavit it is clear that the illegally constructed portion has been demolished and the demolition charges have been sought to be recovered from the respondent no.4. Though we do not

find any case further to order an enquiry against the respondent no.2, we are satisfied that the respondent no.1 - Corporation is required to strengthen its ward offices for a continued action of noticing, identifying and demolishing all illegal structures in the private premises as well as on public roads, more so when Pune city is witnessing mushrooming construction activities all around it and the pace of construction and development is at a high pitch even in the recently added fringe village areas. If the illegal constructions coming up in the Corporation area are not checked and prevented in time, they are likely to pose a serious threat to the civic amenities, environment, traffic movement, safety of the citizens' lives and property and many other related threatening problems.

4. In the case of Sopan Maruti Thopte & anr. v. Pune Municipal Corporation and anr. **[1996 (1) Mh.L.J. 963]** a Division Bench of this Court laid down the following procedure before taking action under Section 260 of the Bombay Provincial Municipal Corporation Act, 1949:

"(i) In every case where a notice under

Section 260 of B.P.M.C. Act is issued to a party 15 days time shall be given for submitting the reply. In case the party to whom notice is issued sends the reply with the documents, and shows cause, the Municipal Commissioner or Deputy Municipal Commissioner shall consider the reply and if no sufficient cause is shown, given short reasons for not accepting the contention of the affected party.

(ii) It would be open to the Commissioner to demolish the offending structure 15 days after the order of the Commissioner / Deputy Municipal Commissioner is communicated to the affected person.

(iii) In case the staff of the Corporation detects the building which is in the process of being constructed and/or reconstructed and/or extended without valid permission from the Corporation, it would be open to the Commissioner to demolish the same by giving a short notice of 24 hours after drawing a panchanama at the site and also by taking

photographs of such structure and/or extension. The photographs should indicate the date when the same were taken.

(iv) In case where the Municipal Corporation has followed due process of law and demolished the unauthorised structure and/or extension, if the same is reconstructed without valid permission within a period of one year, it would also be open to the Corporation to demolish the same by giving a short notice of 24 hours.

(v) If the offending structure and/or extension which is assessed by the Corporation for two years, notice shall provide for 15 days time to show cause. If the Deputy Municipal Commissioner comes to the conclusion that he requires assistance of the party, he may give an oral hearing if he deems fit and proper before passing the order. It is made clear that oral hearing is not at all compulsory but it is at the discretion of the authority.

(vi) In any other case the Corporation is directed to issue a show cause notice in case of any structure and/or extension other than those mentioned in clauses (iv) to (iv) above. The Corporation shall provide for 7 days time to show cause in such a case."

5. It is also necessary to draw the attention of the Commissioner and the City Engineer of the Respondent no.1 - Corporation to the following observations made by the Supreme Court in the case of Friends Colony Development Committee v. State of Orissa & ors. **[(2004) 8 SCC 733]**:

"... Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly

demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorised constructions, but who failed in doing so either by negligence or by connivance."

6. The respondent no.1 - Corporation has a statutory duties under the Bombay Provincial Municipal Corporation Act, 1949 as well as MRTP Act, 1966 and it cannot wait for the citizens to approach it with complaints of illegal constructions or demolitions. The ward offices of the Corporation must keep a day-to-day vigil in their respective areas and report any such illegal constructions to the City Engineer. It may also be necessary for the Corporation to establish more ward offices in view of the on going fast growth of the construction activities within and around the Corporation areas

and to create a separate post, if the same does not exist as at present, of Deputy or Assistant Commissioner, In-charge of Enforcement.

7. While we dispose off this petition, we direct the respondent no.1 - Corporation through its Commissioner and the City Engineer as under:

(a) To follow the directions issued by this Court in the case of Sopan Maruti Thopte (Supra) read with the directions given by the Apex Court in the case of Friends Colony Development Committee (Supra).

(b) To increase and strengthen the ward offices. The Ward Officers shall be responsible to carry out inspections within their areas by personal visits and submit reports to the City Engineer fortnightly.

(c) The Commissioner and the City Engineer shall set up a mechanism to fix individual accountability of the ward officers and these ward officers will proceed strictly as per the provisions of the BPMC Act, 1949 and the MRTP

Act, 1966 and without being influenced by any interference political or otherwise in respect of such illegal constructions / encroachments on private or public premises as well as the public roads. Failure to carry out these statutory duties shall invite disciplinary action against the officers / engineers / employees concerned.

(d) The guidelines laid down by this Court in the case of Sopan Maruti Thopte be circulated by the City Engineer to all the Ward Offices for their strict compliance.

8. Writ to go to the Respondent no.1 forthwith.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)